



1 facts and legal clarification to cure any deficiencies in her Complaint.” (Doc. 53 at 1) The  
2 Court will explain why Plaintiff’s request will be denied.

3 “Federal Rule of Civil Procedure 16 vests the district court with early control  
4 over cases ‘toward a process of judicial management that embraces the entire pretrial phase,  
5 especially motions and discovery.’” *In re Arizona*, 528 F.3d 652, 657 (9th Cir. 2009), *cert.*  
6 *denied*, \_\_\_\_ S.Ct. \_\_\_\_, 2009 WL 1738654 (2009) (quoting Fed.R.Civ.P. 16 advisory  
7 committee’s note, 1983 Amendment). “Rule 16 further recognizes the inherent power of the  
8 district court to enforce its pretrial orders through sanctions, Fed. R. Civ. P. 16(f), and the  
9 discretion of the [trial] judge to apply an appropriate level of supervision as dictated by the  
10 issues raised by each individual case.” *Id.* (citing *e.g.*, Fed. R. Civ. P. 16(c)(2)). Rule  
11 16(b)(4), Fed.R.Civ.P., mandates that the scheduling order “may be modified only for *good*  
12 *cause* and with the judge’s consent.” Rule 16(b)(4), Fed.R.Civ.P. (emphasis added).  
13 Emphasizing the meaningful nature of the Rule 16 deadlines, the Ninth Circuit has made  
14 clear that “Federal Rule of Civil Procedure 16 is to be taken seriously. . . .” *Janicki Logging*  
15 *Co. v. Mateer*, 42 F.3d 561, 566 (9th Cir. 1994).

16 Federal Rule of Civil Procedure 16(b)(4)’s “good cause” standard primarily  
17 considers the diligence of the party seeking the amendment. *Johnson v. Mammoth*  
18 *Recreations, Inc.*, 975 F.2d 604, 607-08 (9th Cir. 1992 ). The district court may modify the  
19 pretrial schedule “if it cannot reasonably be met despite the diligence of the party seeking the  
20 extension.” *Johnson*, 975 F.2d at 608. “Good cause” means the scheduling deadlines cannot  
21 be met despite a party’s diligence, citing 6A Wright, Miller & Kane, *Federal Practice and*  
22 *Procedure* § 1522.1 at 231 (2d ed. 1990). (*Id.*)

23 The requisite good cause for extending the deadline to amend the Complaint  
24 or any other pleadings has not been shown in this case. Plaintiff’s counsel has had more than  
25 a reasonable adequate amount of time to amend the Complaint to allege a *Monell* claim and  
26 engage in discovery related to *Monell* issues. Plaintiff has not demonstrated any reason, much  
27 less a good one, why she could not have moved to amend the Complaint before now,  
28 especially when Defendants raised this issue early in this litigation that “Plaintiff fails to state

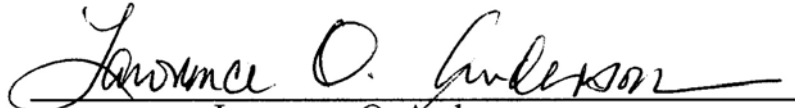
1 a Monell claim against the City[.]” (Doc. 15 at 5). The Court agrees with Defendants that if  
2 Plaintiff were granted leave to amend this late in the case “Defendants would suffer  
3 substantial prejudice.” (Doc. 54 at 8) “Defendants have already disclosed expert opinions,  
4 listed trial witnesses, taken depositions, and briefed the motion for summary judgment. The  
5 case that has been prepared for trial and analyzed for summary judgment purposes was (sic)  
6 a use of force case. What Plaintiff is proposing is a different case looking at the propriety of  
7 Mesa’s training and policies.” (*Id.*) If Plaintiff were allowed to raise new theories of liability  
8 at the eleventh hour, it is likely the Court would also need to extend the discovery and  
9 dispositive motion deadlines, rendering the original Rule 16 scheduling deadlines  
10 meaningless.

11           The Court repeats what it wrote on July 15, 2010, that counsel were forewarned  
12 during the scheduling conference by the Court and reinforced in the scheduling order itself  
13 that the scheduling “deadlines are **real, firm**, and, consistent with the undersigned’s  
14 responsibilities mandated by Congress in the Civil Justice Reform Act of 1990, 28 U.S.C.  
15 § 471 *et seq.*, **will not be altered** except only upon a showing of good cause and by leave of  
16 the assigned trial judge.” (Docs. 17 at 2, 27 at 2) (emphasis in original) (footnote omitted).  
17 The scheduling order gives fair notice to the parties that “[t]he Court intends to enforce the  
18 deadlines in this Order. Counsel should plan their litigation activities accordingly[.]” citing  
19 *Hostnut.Com, Inc.v. Go Daddy Software, Inc.*, 2006 WL 2573201 \*1 (D. Ariz. 2006). Like  
20 the 120-day deadline to serve process pursuant to Rule 4(m), to hold that good cause has  
21 been shown here, “would allow the good cause exception to swallow the rule.” *Townsel v.*  
22 *County of Contra Costa*, 820 F.2d 319, 320 (9<sup>th</sup> Cir. 1987). Also see, *Zivkovic v. Southern*  
23 *Calif. Edison Co.*, 302 F.3d 1080, 1087 (9<sup>th</sup> Cir. 2002) (holding that party failed to  
24 demonstrate good cause where a continuance was requested four months after the scheduling  
25 order was issued, and plaintiff was not diligent in complying with the Rule 16 schedule)  
26 (citation omitted).

27           After consideration of the untimeliness of Plaintiff’s request to amend, the  
28 relevant case law, the absence of good cause, and the present posture of this case,

1                   **IT IS ORDERED** that Plaintiff's request to amend the Complaint to allege a  
2 *Monell* claim is **DENIED**.

3                   Dated this 14<sup>th</sup> day of February, 2011.

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6                   Lawrence O. Anderson  
7                   United States Magistrate Judge  
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